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Ownership, Collective Action, and
Changing Notions of Worth in Romanian
Mutual Fund Industry**

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Values in Exchange: Ambiguous Ownership, Collective Action, and Changing Notions of Worth in Romanian Mutual Fund Industry¹

Working Paper

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Abstract

This paper analyzes the political disputes and legal contentions occasioned by the process of regulatory reform undergone by Romanian mutual fund industry. Stirred by Romania's accession into the European Union in 2007 and prompted by the numerous financial scandals affecting the market right from its creation in 1994, the reform is meant as a reconfiguration of the investment philosophy characterizing the capital market. My claim is that the uneasy reception of the new institutional arrangement is related to the shifting premises for the formation of value and the deeper changes in the prevalent conceptions of worth associated with Romania's economic transition.

Keywords: financial regulation, mutual funds, anthropology of finance

Introduction

This paper analyzes the disputes occasioned by the process of regulatory reform undergone by Romanian mutual fund industry. Stirred by Romania's accession into the European Union (EU) in 2007 and prompted by the numerous financial scandals affecting the market right from its creation in 1994, the reform is meant as a reconfiguration of the investment philosophy characterizing the capital market. The paper draws on a wider research project concerned with the renegotiation of social values in post-communist Romania. The emergent values here are intimately connected to and made visible by arguments about new meanings of money, altered understandings of risk, or changing roles for the state and its regulatory agencies in post-communism and during a period of assumed Europeanization. The main questions of my paper are: how do new forms of investment and monetary accumulation dependent on the erratic behavior of the market fit with previous notions of money whose

¹ Different phases of the research the results of which are presented in this paper have been generously supported by a pre-dissertation grant from the Council for European Studies / Society for the Anthropology of Europe, a doctoral dissertation improvement grant from the National Science Foundation, a fellowship awarded by the New Europe College (Bucharest), and a research grant provided by CERGE-EI Foundation (Czech Republic).

value was intimately linked to personal diligence (or any legitimate form of work)? Should the state be concerned with the taming of generalized forms of social risk through direct intervention or should it limit its role to the adoption and enforcement of technocratic rules? How does the intense institutional import from the European Union play into the existing local disputes over money, value, and property? How are “European” categories mediated by existing conceptions of worth?

I take the contentions generated by this radical transformation as an opportunity to observe the shifting premises for the formation of value and the changing notions of worth in contemporary Romania (Boltanski and Thévenot 1991). Whereas formerly mutual funds were associative entities which, in spite of the ambiguous ownership, could be controlled by a collective of investors (through a Council of Trustees), the legal reforms attribute control over funds to management firms and do away with the premises for collective action by investors. The transition from a political order in which the premises for rights, action and value were defined collectively, as part of a larger community of investors, to a polity in which criteria of worth are premised on the more abstract qualification of investors - as actors able to choose among investment opportunities but no longer to influence the projects they take part in, generates numerous contentions with a direct impact on the legitimacy of the new institutional arrangements.

By focusing on a particular instance in which the “laws of the market” (Callon 1998) are negotiated by state officials, regulators, institutional investors, and lay investors, my paper offers an interpretation of the ambivalent reception of contemporary capitalism in Eastern Europe and suggests ways to evaluate such historical transformations in other former socialist societies. This analysis, thus, shares a topical interest in social change with the previous “transition studies” and “postsocialist studies” but moves beyond these somehow dated literatures pursuing a concern with “Europeanization” and the forms of policy-making (mainly the conditions of political action) in the European Union (EU).

This paper draws on observation and interviews among the representatives of small investors involved in the drafting and evaluation of the new regulations, and interviews with European and Romanian securities regulators, representatives of investment management companies, brokerage companies and depositaries for investment funds.² It also draws on the

² Semi-structured interviews and informal discussions were made with representatives of the Romanian National Securities Commission (*CNVM*), of the Brokers’ Association, of the Union of Collective Investors in Transferable Securities (*UNOPC*), of depositaries for investment funds and of the National Association for the Protection of Investors (*ANPI*) in Bucharest, as well as with representatives of the Committee of European Securities Regulators (*CESR*) in Paris.

study of case files of trials initiated by market actors contesting various provisions of the new regulations, and on a comparative analysis of laws and regulations for the capital market in Romania.

Money and values in post-communist Eastern Europe

Money has been one of the most interesting topics of research in postsocialist studies, a domain of practice where the social change after 1989 has been the most conspicuous, available for observation and study. Although previous works in the social sciences have already looked into the transformation of monetary practices, they have focused either on monetary aggregates and the policies aimed to control them (in the case of economists or political scientists), or on the role of money in market exchange and the social practices involving cash (in the case of anthropologists and sociologists). Thus, economists and political scientists have written about systematic monetary reforms (Stiglitz 1993; Mullineux 1996; Bléjer and Skreb 1998;), about the dynamic of monetary aggregates and of inflation (de Grauwe and Lavrac 1999; Buchenrieder 2002), or about the institutional and legal arrangements governing monetary policies neglecting usually popular understandings of money or the role of meaning as an ingredient of social action (Amsden and Kochanowicz 1994; Rostowski 1995; Wihlborg 1999; Dickinson and Mullineux 2001; Sevic 2002). Sociologists have also described transformations in social processes mediated by money but have focused either on the institutional (Stark and Bruszt 1998; Markiewicz 2007) or on the distributional (Seabright 2000; Cernat 2004; Korovilas 2004) implications of such transformations, privileging social realities at the expense of individual agency and paying almost no attention to the construction of monetary categories through social action itself.

Closer to my approach, anthropologists of Eastern Europe have studied money by focusing on the declining role of currency (Woodruff 1999; Clarke 2000; Humphrey 2000), the emergence of pyramid schemes (Verdery 1995a, b), the production of knowledge and capital (Verdery 1995b, 1996), or the reconfiguration of moral categories (Lemon 1998; Ries 2002; Mandel and Humphrey 2002) in everyday transactions involving cash and barter.

Although more attentive to the details and diversity of social situations, anthropologists of Eastern Europe have so far shied away from engaging the practices of financial elites. Few have focused on more abstract notions of money, on the social construction of financial schemes, or on the regulatory interventions aimed to govern the

processes of monetary accumulation.³ My research addresses specifically these kinds of processes considering them an ideal context for the study of the concomitant reorganization of monetary practices and social values. My work is particularly indebted to the literatures in the anthropology of money (Maurer 2005a, 2006; Hart 2000, 2005), the sociology of financial markets (Callon 1998; Knorr Cetina and Preda 2004) and the economy of conventions (Juhem 1994; Thevenot 2001; Woolsey Biggart and Beamish 2003). Such literatures try to understand the forms of sociality connected to finance capitalism (Knorr Cetina and Bruegger 2002a, b, c), the forms of knowledge supporting contemporary financial markets (Callon 1998; Knorr Cetina and Preda 2004; Beunza and Stark 2004a, b), the abstract forms of commensuration and risk management mediated by modern money (LiPuma and Lee 2002, 2004; Maurer 1999), or the substantive engagement of markets by financial practitioners (Knorr-Cetina and Bruegger 2002; Zaloom 2004; Miyazaki 2006).

The distinctive aspect of my approach is the focus on a specific instance where the regulatory dimensions of capitalism are filtered through the local disputes over money, value, and ownership by those directly affected by the regulations. By trying to come to terms with a particular historical context – Romania’s ongoing integration into the European Union, my research shifts focus from the production of knowledge in the heart of high finance (s.a. the investment banks of London and New York analyzed by many engaged in the social studies of finance) to the negotiation of forms, norms, regulations and values taking place in a rather peripheral setting currently incorporated in the late capitalist system. Not only it is in such settings that the most elementary ideas related to contemporary forms of money are continuously called into question, but, as the recent crisis of the sub-prime financial products shows, even the most abstract financial practices build on and directly impact the transactions making up everyday life: buying a house, saving for retirement, or investing in forms of money that promise not to be affected by inflation.

Mutual funds and their regulation in Romania

Investment funds constituted one the most promising areas of the financial sector during the post-communist period, both from the perspective of institutional creativity and from that of the return on investments. Constituting a repertoire of practice altogether new, distinct from the few opportunities for investing money under communism, investment funds were

³ The notable exceptions are Bill Maurer (1998, 1999, 2002, 2006), Annelise Riles (2000a, 2000b, 2001), Hirokazu Miyazaki (2006) and Caitlyn Zaloom (2003, 2004, 2005) who work in different parts of the world and focus usually on the speculative practices of financial traders and the activity of regulatory bodies in developed financial systems.

ambiguously situated (perceived) by the public in between the stock exchange, the emerging commercial banks (themselves something different from the sole state savings bank in communism to which lay investors had access), and ponzi schemes proliferating throughout Romania during the 1990s. While public perceptions of the funds departed considerably from the institutional varieties adopted in Romania as well as from the Western models considered in the process, the promise of enrichment through financial speculation were built in the sector from the beginning. Investments funds, coming both in the “close-end” varieties and as mutual funds,⁴ were meant, at least by the Romanian architects of the economic reform (Vosgian 1999; Anghelache 2000), to support the creation and growth of the capital market, to channel savings into investments for newly privatized companies, and to give an opportunity to retail investors to diversify their portfolios.

Although they took off rapidly capitalizing on the newly created opportunities in the Romanian economy, mutual funds were subject to some of the most notorious collapses in post-communist Romania due to a combination of poor regulation, weak enforcement of rules, and fraudulent behavior of fund managers. Such was the case with two mutual funds that collapsed in 2000 (the National Investment Fund [*FNI*] and the National Accumulation Fund [*FNA*]) washing away the savings of hundreds of thousands of investors and producing a wide reaching political scandal. These funds, whose histories are briefly presented below, had far reaching implications on the regulatory regime regarding the capital market and illustrates well the themes approached by this paper.

Romanian capital market, created in the mid 1990s and affected by numerous scandals from the beginning, had a period of consistent growth after 1997 when stabilization and privatization policies were given an impetus by a newly elected right wing coalition of

⁴ Of direct relevance to the questions addressed by this paper, mutual funds (a.k.a., open-end funds) are basically collective investment entities in which investors buy shares. Theoretically, they have several advantages over alternative investment vehicles and especially over close-end funds (a.k.a., risk funds): 1. they allow people to pool resources and make more efficient and less risky investments with the help of skillful administrators; 2. they allow the purchasing and redeeming of shares (i.e., entry and exit) on an ongoing basis. Administrators are supposed to implement the investments strategies and to calculate and declare publicly the current values of the shares (value of all investments less financial obligations divided by number of shares in circulation). Money and other financial assets of the funds are kept by depositary banks which also keep a separate record certifying or not the public values of the shares declared by administrators. Regulators (in Romania the National Securities Commission - *CNVM*) supervise the activity of administrators and depositaries and issues new regulations regarding the activity of these funds. Whereas in most of the Western countries mutual funds would be considered relatively safe financial ventures with a passive portfolio administration strategy, in Romania they became the epitome of financial hazards after several notorious collapses that washed away the life-savings of hundreds of thousands of lay investors. For a classification of European types of investment funds see the web site of the European Fund and Asset Management Association (EFAMA) at www.efama.org; for the American varieties and their regulation see the website of the Investment Company Institute (ICI) at www.ici.org.

parties.⁵ After a problematic beginning,⁶ the investment fund industry took off again at the end of the 1990s capitalizing on the growth of the stock exchange and on the more numerous financial instruments available. In spite of the promising new beginning, it was not long until a new scandal hit the market in 2000. The National Investment Fund (*FNI*) - a mutual fund reaching a record level of investors (over 300,000 during the months preceding its collapse), very high reported net asset values and a large share of the market for mutual funds, collapsed right before the general elections leaving several hundred thousand investors without their life savings and retirement benefits. The reaction of the supervisory agency (*CNVM*) was typically late, unwise and did more harm than good to the retail investors. While the trials related to the collapse of 2000 are not over yet and the numerous audit reports by court appointed experts have been at best superficial, enough information were disclosed to find out that the fund has functioned without a depositary form most of its life, that the caps on the proportion of the portfolio that could be legally invested in unlisted securities and other risky financial instruments have been constantly broken, and that members of the Council of Trustees have been bribed to ignore the illegal transactions of the asset managers. Reported net asset values have been purposefully inflated, asset managers for the fund have been changed repeatedly to obscure responsibility for mismanagement, and the securities commission has chosen to take only last moment measures in spite of being aware of the situation all the time.

The episode precipitated the collapse of the National Accumulation Fund (*FNA*), the twin fund of *FNI*, a couple of months later generating massive requests to redeem the share by retail investors; their attempts, however, have been blocked by the repeated suspension of operations of the two mutual funds ordered by *CNVM*. Public nervousness at the time determined the redeeming of shares in the rest of the mutual funds by many retail investors, the drastic reduction of the overall number of investment fund shareholders (from over 400,000 to less than 40,000 in a year), and the spread of the confidence crisis to the banking sector (rumors lead to massive withdrawals from the Romanian Commercial Bank (*BCR*) –

⁵ The Romanian Democratic Convention [*CDR*] came to power after the elections of 1996 defeating the ruling social democratic party. In spite of the mixed results of their office, *CDR* and its allies in power implement the necessary macro-stabilization measures and tried to speed-up the process of privatization. Both these sets of policies are generally thought to have had a favorable impact on the emerging capital market in Romania.

⁶ While the first mutual funds in Romania were created in 1994, the National Securities Commission (*CNVM*) was created only one year later. The tighter regulations with regards to investment practices and portfolio valuation adopted by the newly created regulatory commission in 1996 led to the collapse of several of the funds that had embarked on risky and potentially valueless investments previously. For a brief but well informed description of the episode of 1996 and its circumstances see Vosgian (1999).

the largest state bank in the system, which almost lead to the precipitate collapse of the bank in the fall of 2000).⁷

Acting to recuperate the money lost and for the conviction of those responsible, many of the investors affected by the collapse of the investment funds have gathered in civic associations (NGOs) that militate for the protection of investors and the rights of minority shareholders. Even more consequential than the actions for material and moral reparations have been the increasing calls by institutional and retail investors alike for the revision of the previous regulations governing investment funds and for the improvement of the supervisory activity by state institutions. Public debates concluded that the need for a comprehensive reform was urgent. The goals of the reform should be to tighten regulations regarding investment funds and the activity of asset managers and to reorganize the securities commission (*CNVM*) in order to enhance its supervisory abilities. After the less successful adoption of a new securities law in 2002 (without public consultations and widely contested by the majority of market participants), the opportunity for a more comprehensive market reform was offered by the wider legal harmonization with the EU (the adoption of the *acquis communautaire*) in light of Romania's prospective admission into the Union in 2007.

The Lamfalussy process and capital market reform in Romania

The Romanian National Securities Commission responded to pressures to harmonize its securities and financial investments regulatory framework with that of the rest of EU members and embarked on a massive exercise in legal reform. Such pressures were by the European Commission (EC), by the Committee of European Securities Regulators (CESR) to whose meetings it took part with observer status, and by the capital market participants in Romania (including retail investors in mutual funds). *CNVM* promoted a new statutory law as well as a new regulation for investment management firms, collective investment undertakings and depositories in 2004.⁸

The key role in the adoption of new laws regulating the capital market in Romania, ones also meant to facilitate new processes of policy making in the field, has been played by the Council of European Securities Regulators (CESR) and its measures towards more

⁷ The archival collection of the most important daily and weekly newspapers of the time (s.a. *Evenimentul zilei*, *Adevărul*, *Curentul*, *Capital*, *Bursa*) accurately describe both the series of events that lead to the near collapse of the bank and the panic of the investors.

⁸ See Law no. 297 of 2004 regarding the capital market and *CNVM* Regulation No. 15 of 2004 regarding the authorization and functioning of investment management firms, collective investment undertaking and depositories.

integrated capital markets in Europe.⁹ The model for the new regulations was provided by the EU directives and Regulations adopted by the European Commission after having been drafted by the Committee of European Securities Regulators (CESR)”. CESR is a consultative committee set up to help the EC in its initiative to harmonize and integrate European capital markets with the aim of facilitating cross border investments and financial capital mobility in Europe. Its goals are not only to make national governments adopt harmonized regulations and to stimulate better cooperation among national securities regulators, but also to promote new modalities for policy making and the adoption of regulatory measures regarding the capital markets. The new policy making mechanisms draws on broad consultations with all market actors (including lay investors) and is premised on the transparent adoption of new regulations.

In more detail, CESR is the concrete result of a series of action plans and policies outlined in the Financial Services Action Plan (FSAP) initiated by the European Commission in 1999 and made an integral part of the “Lisbon Agenda” by the European Council in Lisbon in April 2000. FSAP’s aim was to further the creation of a single market in financial services within the EU; it also identified the need of pan-European reforms in securities markets regulations that could be addressed by the adoption of new laws, by the implementation of new law-making policies, and by paying attention to the mechanisms of market supervision. *A Committee of Wise Men on the Regulation of Security Markets* chaired by Baron Alexandre Lamfalussy was mandated by the *ECOFIN* of July 17, 2000 to produce a more accurate diagnosis of the state of capital market regulation across Europe and to suggest more specific policies to further their integration.

Apart from a lucid evaluation of the weaknesses in European capital markets, the *Final Report on the Regulation of European Securities Markets*¹⁰ suggested a systematic set of measures organized according to a four level approach consisting of framework principles (level 1), directives and regulations to implement the principles (level 2), enhanced cooperation among national securities regulators to implement levels 1 and 2 (level 3), and actions to enforce Community law and to strengthen European coordination in securities regulation (level 4). To sum up, the Lamfalussy process was meant to introduce not only new (harmonized) principles and regulations of securities markets but to institutionalize a new process of policy making in the field characterized by broad and transparent consultations

⁹ The ensemble of institutions and policies centered on CESR is also known at the European Union level as the *Lamfalussy process*.

¹⁰ See Committee of Wise Men (2001), *Final Report on the Regulation of European Securities Markets*, available at www.cesr-eu.org.

with, the incorporation of suggestions from, and the strengthened cooperation among all market actors.¹¹

According to annual reports published by the securities commission (*CNVM*)¹² and to assessments by market participants, Romania has transposed, even if somehow “mechanically” and without paying attention to the costs of immediate compliance by market actors, all key EU directives and regulations adopted by the European Commission with technical advice from CESR.¹³ Concretely, while Law no. 297 of 2004 and *CNVM* Regulation no. 15 of 2004 transposed all pre-Lamfalussy EU regulations regarding securities (including the 1985 directive on the undertakings in collective investments in transferable securities [UCITS]¹⁴) and the Lamfalussy directives regarding ‘prospectus’ and ‘market abuse,’ the new legal framework soon became dated given the relatively high pace of reform at the European level. Subsequently, new regulatory interventions by the Romanian securities commission meant to transpose the post-2004 directives and regulation adopted by the EU were made in 2006 and 2007. Furthermore, new regulations are announced by *CNVM* that are meant to address the requests by market participants to specify more clearly the procedural aspects of the new rules, to eliminate the overlaps between the law on the capital market, regulations covering banking services, and the Company Act, as well as to redesign the entire law regarding the capital market (with a possible institutional reorganization of the securities commission itself).

The impact of the new regulations on corporate governance in mutual funds

In spite of the efforts to transpose the best European practices in the filed through the recent regulatory reform and of the best intentions of all market actors (regulators, intermediaries and investors), the results have not met everybody’s expectations. Although, based on Law no. 52 of 2003 regarding transparency of decision-making in public administration, adopted also under EU pressure, *CNVM* has organized meetings and accepted suggestions from various interested parties (institutional investors, administrators, depositaries) including

¹¹ For a more detailed presentation of the working methods and policies implemented by CESR see ‘How CESR Works within the Lamfalussy Process,’ document available at <http://www.cesr.eu/index.php?page=institutionalcontext&mac=0&id=> and the excellent book by Ellis Ferran (2004).

¹² All the *CNVM* annual reports can be downloaded from the website of the institution at: <http://www.cnvmr.ro/en/raportannual.htm>.

¹³ The most important ‘Lamfalussy’ directives adopted by the European Commission through the co-decision procedure and after consultation of market actors by CESR are the Prospectus Directive, the Market Abuse Directive, the Transparency Directive, and the Markets in Financial Instruments Directive (MiFID).

¹⁴ See *Directive 85/611/EEC of the Council (UCITS)* on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

associations for the protection of investors, the result has been ambivalent, areas of improvement alternating with provisions that are either inapplicable or extremely costly when compared to the benefits in terms of market transparency and investor protection. Regulations concerning mutual funds and financial investment companies have received a mixed reception from asset managers, brokers, and institutional investors. Although they acknowledge the considerable improvements from the pre-2004 regulations (in terms of institutional clarity; better allocation of responsibility between managers, depositaries and distributors of funds; clear rules regarding prospectus; easier administrative procedures and registration of funds; simplified entry and exist procedures), such institutional actors claim that the current regulatory framework was already left behind by the current developments in EU regulations and in management practices of European fund administrators (as reflected by EFAMA recommendations and implemented indicators of fund performance/risk).¹⁵ Furthermore, the Romanian securities commission has transposed many of the European regulations overnight, based on poor translations, and without paying enough attention to the practicalities of enforcing the new provisions. This makes necessary a lot of “trimming” of the newly adopted laws and regulations meant to reduce institutional uncertainty and the costs of compliance with the rules.

At the same time, representatives of retail investors and most of the financial journalists make a more critical assessment of the recent legal provisions. Thus, with regards to investor protection the new regulatory framework is less comprehensive than the pre-2004 one (developed in the mid-1990s with USAID support and modeled on US-SEC regulations)¹⁶ especially with regards to the rights of individual investors. The shareholders of mutual funds functioning according to the old regulations voted in a General Assembly on issues pertaining to the activity of the fund and were represented by a Council of Trustees mandated to overlook the activity of asset managers. Although the involvement of the Trustees has been a fiasco in the case of the mutual funds that collapsed in the past, many consider this is no reason to eliminate it altogether. The new regulations (in tune with those of European-type investment funds) remove both the General Assembly and the Council of Trustees allocating the ownership and responsibility of operating investment funds to asset managers. The protection of investors is effected by the more clearly written mandatory

¹⁵ The European Fund and Asset Management Association (EFAMA). More information available at: www.efama.org.

¹⁶ Research papers and policy reports written by USAID employees and affiliated researchers specify the objectives, practical measures taken towards, and results of the policies meant to create efficient capital markets in Romania and other Eastern European countries (Deloitte Touche 2002; Fox 2000; Lieberson et al. 1998).

provisions of the prospectus and by easing the entry and exit procedures for holders of fund units (shares) when major changes in management, organizational structure or investment strategy are operated. The attempts by the associations of investors and independent experts to provide more generous entry/exit terms for the shareholders, to create the possibility for independent oversight of the asset manager activity, and even to preserve some of the favorable provisions of the old regulations have met the refusal of the securities commission and the criticism of the asset management industry.

The effect on the governance of these collective entities has also been ambivalent. Thus, asset managers seem to repudiate altogether the issues pertaining to corporate governance from the discussions about the EU harmonized investment funds. For them, corporate governance refers to relations inside asset management companies and, at the most, those inside financial investment companies. From such a perspective, the principles governing relations among the diverse stakeholders of investments funds (an especially those among retail investors and asset managers) are obscured when subsumed by the prospectus provisions and the entry/exit provisions. This comes in direct contradiction to the demands of retail investors. They claim that, given the histories of deception on Romanian financial markets and the poor record of law enforcement there, the concern of investors with the security of their money cannot simply be relegated to impersonal rules. They claim that the existence of comprehensive rules did not prevent the previous collapses of mutual funds. They also do not trust the securities commission with enforcing existing regulations given both its past record of ambivalent supervision and its current performance during public consultations.¹⁷

As a consequence, associations of investors accuse CNVM of having organized superficial and formal consultations and of not having incorporated their suggestions meant to enforce the rights of retail investors or to improve corporate governance in investment funds, all in the advantage of professional investors and fund administrators. At least from the point of view of retail investors, so far the process of harmonization with the EU framework has led to deregulation, with ambivalent results and affecting asymmetrically various interested parties. This situation has stirred further public protests from the association of investors and has led to court action against the Romanian securities commission by market actors intending to force the suspension or modification of the new regulations.

¹⁷ All these opinions were expressed at a focus group organized by the author as part of a research project supported by Freedom House Romania and funded by CERGE-EI Foundation (Czech Republic).

The mediation of European regulatory forms by local disputes on Romanian capital market

As already mentioned in the first sections of the paper, the regulatory reforms described above have been prompted by and filtered through the disputes over the sounding financial collapses affecting the mutual fund industry. The recent regulatory harmonization has ultimately played into some of the very legal and institutional contentions that have made it necessary complicating the situation further. Such is the case with the two investment funds whose history I have been documenting for the past two years: the National Investment Fund [FNI] and the National Accumulation Fund [FNA].

Working with some of investors in the default funds, witnessing numerous of their weekly meetings, the forms of public protest adopted by their representatives, and the trials initiated against those responsible for the collapse of the funds, I focus on the changing meanings of money, on the forms of monetary commensuration facilitating assessments of value, as well as on the allocation of responsibilities and compensations as modalities to bring a resolution to the disputes. Such disputes give me the opportunity to focus on ideas of measurability of value, that is, on the usefulness and modalities in which money can be used as a reliable measure to assess the values of the funds and of the compensations. Although this seems a straightforward issue it is not. Not only do financial theories, legal codes and, securities regulations provide divergent interpretations, but the actants involved in disputes (including lay investors) suggest new and interesting ways of understanding ideas of wealth, monetary gain, profit, risks, and state guarantees. Moreover, there is an intimate relation between arguments about economic value formation and the moral justifications for practices that generate value. By this I mean that particular moral perspectives recommend specific assessments of value (ex: profit, work, gamble, monetary gain). Those making a claim to specific commensurations of value use more than technical arguments trying to manipulate (and even reconstitute) available moral repertoires and actively situate their more or less scientific claims in a moral perspective. Their justifications are meant to present their calculations as not only technically accurate but as being in agreement with the already accepted moral values (something Boltanski and Thevenot call “orders of worth” [2006]).

Given the multifaceted contentions over values, it comes as no surprise that the consequences of these disputes are not limited to the recuperation of losses but aim at redefining the rules of investment and influencing the conditions under which some of the existing financial organizations can be continued. As explained above, at least as consequential as investors’ actions for material and moral reparations have been their

campaigns for the revision of the previous regulations governing investment funds and for the improvement of the supervisory activity by state institutions. Such calls for regulatory interventions have been justified not only by examples of past financial defaults but also by the contemporary trajectory of the collapsed mutual funds. The most notorious such funds (e.g., Businessmen's Fund [FOA/SAFI] defaulted in 1996, of National Investment Fund [FNI] and National Accumulation Fund [FNA] collapsed in 2000) have not been legally dissolved. Rather, they have been repeatedly suspended from operations and later transformed into close-end funds having increasingly rigid entry/exit procedures. While advocates of such organizational transmutations argue that the funds have been given a second chance, small investors generally feel "trapped" in the new entities (as "serfs on financial estates"), argue they have lost control of their money, and complain that such measures are meant to conceal the responsibilities of those involved in the initial collapse of the funds (administrators and state officials alike).

As already pointed out, the reform has taken a hasty and chaotic aspect as the most immediate goal was that of adopting the European regulations before the closing of the accession negotiation. The suggestions made by lay investors have been consistently neglected without justification from the Romanian securities commission and in spite of the fact that no contrary position on any of the issues in dispute has been adopted by any other of the market actors. No wonder, then, that the most vocal contesters of the new laws have been the representatives of small investors. They argue that the American-inspired regulatory framework were better as it attributed a more important role to non-institutional investors. To blame for the numerous financial defaults are not the rules themselves, representatives of retail investors believe, but different actors responsible for the sound functioning of the capital market. Small investors argue that, lacking a proper "investment culture", regulators, administrators, and investors alike have mimicked the American procedures of collective governance without adopting its basic values. According to them, the solution should have consisted of piecemeal regulatory interventions, improved supervision, and proper enforcement of regulations.¹⁸

The new regulatory framework takes away the investors' possibility to *voice* their concerns (by eliminating the Council of Trustees and its attributions) and only leaves them

¹⁸ Such opinions were expressed by the leaders of the Association for the Protection of Investors [ANPI], the most prominent NGO representing investors in the penal trials against the managers of the defaulted funds and in negotiations with CNVM over the form of the new regulations regarding mutual funds. They were documented during interviews realized by the researcher in 2007 and 2008 and in the frequent opinion pieces published by the president of ANPI in the daily financial newspaper *Bursa*.

the possibility to *exit* collective investment undertakings (Hirschman 1970). More precisely, investment funds are now initiated and controlled by administrators (specialized financial companies), and investors are allowed to redeem their shares for a very brief period of time when major changes to their Articles of Incorporation are made.¹⁹ Small investors fear the new legal infrastructure of the market will become just another “form without substance”²⁰ if the regulators keep siding with institutional investors and ignoring lay investors.

At the same time, state officials and fund administrators argue that the new regulations are “more modern and harmonized [with European directives]”.²¹ The emulation of the EU regulatory framework will not only create the premises for Romania’s incorporation into the common market for financial services but, its supporters believe, brings a “new philosophy” for the fund industry. Thus, the intricacies of collective ownership and action generated by the old legislation will be eliminated by a clear allocation of control to administrators and the protection of investors by more clear and transparent procedures. In the long run, Romanian regulators hope the imitation of European institutions and the opening up of Romanian capital market to European financial service providers will increase its soundness and will inculcate the “proper values” to Romanian investors.

The succinct description of the current state of the collective investment undertakings (i.e. mutual funds) in Romania the way it is reflected by the diverging opinions of the various market actors must integrate at least two perspectives. Thus, it is true, from a certain perspective, that the new regulatory infrastructure can facilitate the circulation of financial capitals (as the Romanian securities regulators argue) but not enforced properly they offer plenty of leeway to deceptive fund administrators.²² From a different perspective, lay investors are right to claim that the previous collective ownership provisions were closer to the principles of mutuality and offered better means of control over their money but their persistence in refusing to accept any kind of change can make them anachronistic.

¹⁹ All of these are specific provision of Law no. 297 of 2004 and of CNVM Regulation no. 15 of 2004 cited above.

²⁰ The expression resumes one of the most significant critical opinions expressed against the rapid modernization of Romania and the institutional import from the West during the nineteenth century. Formulated by the Conservative lawyer and literary critic Titu Maiorescu (1840-1917) the position resumed above generated one of the longer lasting and important cultural debates in modern Romania.

²¹ The evaluation of the new regulations was made by two *CNVM* directors in a personal interview realized by the author in September 2006.

²² *FNI* and *FNA* were only the most notorious cases of mutual fund collapses in post-communist Romania. Several other examples of funds that lost important amounts of their values when the deceptive practices of asset managers were uncovered are less known outside Romania although they feed into the concerns of the investors described by this paper.

Social change, capitalism, and transforming orders of worth in contemporary Romania

The attentive examination of the disputes over regulations briefly described above allows us to understand better three processes at play in this situation, all of them subsumed by the more general process of social change. First, the dispute illustrates well the ways in which transnational processes involving the financial market (in this case, the pan-European harmonization of capital markets) is locally constituted and interpreted through the lens of local disputes. An EU driven regulatory process takes a diversity of forms in local arenas, the specific socio-political contexts that mediate it locally being to a considerable extent responsible both for the end result of the reform, for its practical consequences, and for its subsequent legitimacy.

Second, actors situated in local milieus manipulate such regulatory processes for their own ends building in a diversity of meanings that often contradict the intentions of the initiators of the process. The rhetoric used by the actors involved facilitates ones understanding of the ways „Europeanization” and „European values” become powerful argumentative repertoires in contemporary Romania, although ones displaying a remarkable internal diversity. In a polity where the EU accession became the overarching legitimating discourse, hierarchies of power and the endorsement of particular institutional forms (as „more genuinely European”) are realized through the pragmatic manipulation and the creative redefinition of the meanings of European categories or „Europeanness.”

Third, the situation described sheds light on the negotiations of the various moral / economic / legal criteria according to which a particular perspective on changes affecting the market is accepted as more relevant than alternative ones. Alternative regimes of value compete for constituting the legitimating basis for legal-economic disputes. As already illustrated, the actors involved in disputes do not only struggle to put their claims in accord to one regime of value or another but constantly argue over the relevant regime. In the process they actively renegotiate and reconfigure the prevalent „orders of worth” in which their disputes over value are dynamically situated.

Echoing old polemics between cultural theorists regarding the modernization of Romania, that is, those between the supporters of Europeanization proposing the “theory of synchronism”²³ and the Conservative critics of rapid institutional imports from the West

²³ Considered the conceptual and political opposite of the criticism of “forms without substance” proposed by Titut Maiorescu, the “theory of synchronism” elaborated by literary critic Eugen Lovinescu (1881-1943) in *his Istoria civilizatiei române moderne* (The History of Modern Romanian Civilization) and *Istoria literaturii române contemporane* (History of Contemporary Romanian Literature) advocated the controlled

writing about the dangers of adopting “forms without substance”²⁴, the current dispute between the critics of rapid institutional import and the advocates of modernization-qua-emulation of European political forms tends to overlook the situated character of the process of regulatory reform. Both parties neglect the diversity of the actors on Romanian capital market, portraying them as passive and uncritical receptors of cultural forms, devoid of agency. Consequently, both interpretations ignore the local adaptation of imported forms and, in spite of the numerous allegations of corruption and personal involvement, miss the pragmatics of this mimetic act (Jayussi 1984, 1991).

The glossing over the distinct ways in which actors connect to the normative market models and the suppression of differently situated opinions on the reform is visible in the way “Europe” and “Europeanization” are used discursively.²⁵ The Romanian securities commission builds on the involvement of CESR and of the European Commission in the process and uses the motive of Europeanization as a self-understood reason to accept the reform. During the interviews I realized, directors in the securities commission have repeatedly claimed that the new regulations are “more modern and more harmonized” with the European framework, failing to specify what that means exactly and in what respects that is an improvement from the previous situation in spite of my repeated questions on the issue.²⁶ A similar rhetoric monopolizes the mass-media interviews and newspaper articles published by specialists affiliated with capital market authorities in Romania.²⁷

The discourse about Europeanization, insistently and superficially used by public authorities in Romania during the last years, is performative²⁸ to the extent that it creates the appearance of unconditional agreement with reforms and de-legitimizes alternative critical

imitation and assimilation of Western models as a way to modernize Romania and to avoid a long term “natural” evolution towards modernity.

²⁴ The starting point for Titu Maiorescu’s formulation of the vaguely defined theory of “forms without substance” is his article *În contra direcției de astăzi în cultura română* (Against the Contemporary Direction in Romanian Culture) published in 1868. For a more nuanced presentation of the cultural debates on the modernization of Romania see Constantin Schifirnet, *Formele fără fond, un brand românesc* (The Forms without Substance, a Romanian Brand), Bucharest, *Comunicare* Publishing House, 2007.

²⁵ This blatantly contradicts the purpose of public consultations meant to encourage critical assessments of the new regulations in order to eliminate their problematic provisions in a timely manner and to build their legitimacy gradually.

²⁶ See the interview realized in September 2006 cited above.

²⁷ Such interviews and opinion articles are published regularly by the financial newspapers in Romania such as *Bursa*, *Ziarul Financiar*, *Săptămâna Financiară* or on the Money Channel (a TV station dedicated to business programs).

²⁸ The concept launched by John L. Austin in his *How to Do Things with Words* (1962) is adopted here to describe the effects of the manipulation of the idea of Europe and of the process of Europeanization by Romanian authorities. For a good illustration of the way the concept can be used to describe the effect of financial theories on communities of brokers and their practices see Donald MacKenzie, *An Engine Not a Camera: How Financial Models shape Markets* (2006).

position at the moment of their articulation. In this regard, the lay investors I interview are relegated to an inferior position characterized by ambiguity (although they know very well what their interests are). This hierarchy of discourses achieved in practice disfavors retail investors for a variety of reasons. Thus, lay investors and actors adopting a critical stance towards the reforms introduced by the state find it hard to question the contemporary political consensus on the necessary Europeanization of Romania. Even more, as the discourse about Europeanization is monopolized by public authorities, it is almost impossible for the lay investors to ground their claims in an equally legitimate grand narrative. Last but equally significant, lay investors appeal to “European” values such as the virtues of transparency and generalized public dialogue on reforms at the same moment they have to argue that the American model of the capital market was better as far as they were concerned.

From a different perspective, the focus on the local process of cultural translation neglects the wider debates in Europe over the varieties of capitalism more compatible with the aims and values of the Union: on the one hand, the more individualistic, more efficient, yet “predatory” Anglo-Saxon model and, on the other hand, the better regulated forms of social capitalism dominant in many countries of Continental Europe.²⁹ The over-simplifying dichotomy between the two main varieties of capitalism glosses over a situation that is more nuanced more complicated and harder to classify than one is led to believe. The intense debates within “the West” itself over the desirable types of capitalist formation or over the aims and forms of regulations are made more visible by the recent sub-prime crisis and the reevaluation of the role of (risk) credit rating agencies. Ironically, as various researchers of the phenomenon have shown, with regards to financial regulation and the infrastructures of the financial market, the “Paris [pan-European] consensus” on the matter seems to enforce the neo-liberal dogmas more effectively than the “predatory” American regulatory framework based on self-regulation [Abdelal 2007].³⁰

Given the multifaceted disputes centered on the contemporary regulatory reform of Romanian capital market, a different approach, one paying attention to the diversity of actors involved in the process and meant to shed light on the pragmatics of the observed

²⁹ The Financial Times constitutes an excellent source of information on the positions with regards to the varieties of capitalism in America and Europe expressed by academics, financial analysts and politicians.

³⁰ In spite of the current events in global financial markets, American regulations, at least those pertaining to the investment fund industry, are more comprehensive than the European ones. Not only do lay investors have more means of controlling the activity of asset managers in the American fund industry, but the issues of corporate governance are treated as an integral part of mutual fund regulations. This is unlike in the European framework (for which CESR is the initiator) where corporate governance is a separate area of policy for the European Commission. This conceptual and political distinction was underlined by Carlo Comporti, CESR Secretary General in an interview realized by the author in Paris on August 1, 2008.

interactions, can render the entire process understandable. In this sense, I regard the legal contentions stemming from this process as forms of action situated in context rather than simply as debates over cultural formations. Moreover, negotiations over the social values and moralities permeating the various regimes of monetary accumulation in Eastern Europe play out in disputes over regulations. In this regard, I neither treat values as the determinants of social action nor simply the result of it, but rather as constituents of action which themselves take a lot of effort to be negotiated and made to appear as taken for granted.³¹

Consequently, this research focuses on the continuous renegotiation and routinization of values occasioned by arguments about new meanings of money, altered understandings of risk, or changing roles for the state and the regulatory agencies. Several issues seem to generate insoluble disputes among diverse participants in these debates and have consequently organized my research. First, the (mis)fit between new forms of investment and monetary accumulation dependent on the erratic behavior of the market and the previous notions of money whose value was intimately linked to personal diligence (or any legitimate form of work) is a resilient theme that emerges in most of the scandals generated by financial collapses in post-communist Romania.³² This theme becomes more acute with the emerging forms of social inequality based on the manipulation of money and financial practices. Second, a resilient understanding of risk as a communal category whose effects can be mitigated by the collective action of investors comes in direct contrast to newer conceptions of risk (promoted by the champions of the capital market) as a measure associated with a portfolio of previous personal choices, and as an assessment of the situation of individual investors rather than collective subjects. This theme emerges from disputes over the specific form a mutual fund should take as either a collective entity owned by the investors or as an abstract product (very similar to a bank deposit) that can be managed and marketed by an asset manager towards a diversity of individual investors. Last but not least, the ongoing arguments between supporters of a state that should be concerned with the taming of generalized forms of social risk through direct intervention and those of a state whose regulatory role should be limited to the adoption and enforcement of technocratic rules. Although the various forms of state intervention in the financial markets are hard to separate in practice, the above distinction between forms of political and regulatory intervention

³¹ I am indebted to the ethnomethodological literature on values, values-in-use and their social constitution (Jayussi 1984, 1991).

³² Various anthropologists of Eastern Europe have identified this motive in the case of many other financial scandals happening in most of the former communist countries in the region (Verdery 1995a, b, Humphrey 2000, Mandel and Humphrey 2002, Korovilas 2004).

captures well the options available for state authorities during the post-communist financial crises.³³

To sum up the disputes over the regulation of mutual funds in contemporary Romania, the specific provisions of the new EU inspired regulations they take away more of the rights of the investors in mutual funds (especially the Council of Trustees), and thus serve as alibis for the measures adopted by the Romanian securities commission with regards to the defaulted funds, that is, for the reorganization of the collapsed funds, for their continuation as close-end funds, and for the obscuring of the legal responsibility for the defaults. As a consequence, the investors I work with became very critical of the regulatory reform and are quite outspoken about it. The emerging disputes about regulations both mirror and play-back into the disputes over compensations for the collapsed funds.

What come out repeatedly during my research is the preference of small investors for a more collective form of action in connection to the funds and to their investments (i.e., something close to the American model of the regulations) at the expense of the more impersonal and individual relations suggested by the EU inspired regulations. Such people know they have recuperated some of their money only when they acted collectively (through investors' associations and various NGOs representing their interests) and believe that the worth of each investor and her monetary gain are premised exactly on the inclusion in such collectivities.³⁴ At the same time, they are afraid that behind the impersonal regulations and rules of transparency poorly enforced by the securities commission brought about by the new regulations administrators will have enough freedom to defraud new funds as they will no longer be controlled by investors. Such claims of lay investors reflect, in my opinion, a generalized sense of insecurity towards the abstract forms of high finance and the uneasy reception of and lack of trust in undertakings otherwise common in market economies.

My claim is, thus, that the uneasy reception of the new institutional arrangement is related to the shifting premises for the formation of value and the deeper changes in the prevalent conceptions of worth (Boltanski and Thévenot 1991) associated with Romania's

³³ A similarly framed choice is currently faced by state authorities in the USA and Europe having to decide on the most appropriate forms of state intervention in the banking industry with the purpose of preventing a general collapse of the financial system.

³⁴ This opinion was repeatedly recorded in interviews realized by the author with lay investors struggling to recuperate the money lost with the collapse of *FNI* and *FNA*. It raises fundamental questions about the catalysts of social action in contemporary Romania. Thus, in spite of the simplistic explanations trying to link the unprecedented success and growth of the two mutual funds to the forms of institutional communication adopted by the asset managers and the banks involved, to the "impersonal" legal forms, or to the aggressive TV commercials at the time, ethnographic research indicates that action was rather situated in discrete social network. Such networks of acquaintances, friends and relatives, the medium through which practical examples, information, and knowledge are disseminated, is where the bases of collective action are set.

economic transition. Whereas formerly mutual funds were associative entities which, in spite of the ambiguous ownership, could be controlled by a collective of investors, the legal reforms attribute control over funds to management firms and do away with the premises for collective action by investors. The transition from a political order in which the premises for rights, action and value were defined collectively, as part of a larger community of investors, to a polity in which criteria of worth are premised on the more abstract qualification of investors - as actors able to choose among investment opportunities but no longer to influence the projects they take part in, generates numerous contentions with a direct impact on the legitimacy of the new institutional arrangements.

Conclusions

The assemblage of practices, institutions, actors, and issues in dispute can reveal the implicit or explicit conceptions about what money is, what are the moral ways to multiply it, what are the roles and responsibilities of the state in safeguarding the legal modalities for the accumulation of money, and what are the rights of investors associated in mutual funds. In such settings, money constitutes a rich set of metaphors organizing people's ideas about value and worth. It forms a pivotal category that allows insight into the deep processes of social change undergone by post-communist societies over the past two decades. A focus on money allows the researcher of change to capture both the diverse institutional projects meant to direct reforms and the substantive engagement with such processes of differently situated social actors.

This paper described the disputes occasioned by the harmonization of investment fund regulations in Romania with those of the EU trying to situate the process both within the broader post-communist change and in the middle of the legal contentions generated by several financial collapses in contemporary Romania. While the CESR and EC driven process of pan-European harmonization of capital market regulations was meant as a reflexive process open to the feed-back and criticism from market actors, its transposition in Romania is at best problematic. The problems raised by this institutional transposition illustrate well the way EU processes are adapted and refashioned in local arenas transforming European policies into multifaceted and decentralized phenomena. The diverse reception of European policies is caused not only by the differences among the national arenas in the EU, but equally by the variety of local actants within national arenas. Asymmetries of power, wealth and knowledge among the actors on local financial markets are responsible for the nuanced reception of EU initiatives in different contexts. Furthermore, the multitude of social

experiences generated by the post-communist change in Eastern Europe is the most important cultural factor accounting for the way apparently centralized processes are mediated locally. In specific contexts and building on histories of financial disputes, local actants appropriate pan-European initiatives filtering them through local meanings of money and value and adapting them to their immediate goals. In the process, the very premises of social action get renegotiated; ideas of ownership, risk, and value are refashioned generating new orders of worth that further constitute the medium into which new institutional imports are made.

Although specific moral judgments and appeals to certain values are implicitly negotiated in the process of arguing over concrete issues, what seems to have been reinforced over the years and with each scandal in Romania is an attitude in which the appeal of new and risky financial ventures promising unprecedented monetary gains and the prudent option for collectivist institutional solutions known to have worked in the past are combined in creative ways. In spite of the contradictory appearance of such mixed attitudes, this captures well the simultaneous lack of trust in any formal and abstract solution and the immediate copying of practices and attitudes that both proved to work in previous situations and are adopted by large numbers of those sharing similar experiences. It also explains the peculiar forms of social order and change witnessed in contemporary Romania.

The conflicting forms of knowledge and distinctive understandings of values illustrated by the disputes analyzed in this paper raise challenging questions about the limits of knowledge in financial processes (both before and after the events) and their implications on the economic and legal responsibilities of those making financial decisions for the many (lay investors). can somebody be convicted when realizing that the herding of investors can lead both to unprecedented growth (a process called “irrational exuberance” by Alan Greenspan and Robert Schiller (2000) and to the overnight collapse of even the biggest financial institutions? How can legal responsibilities be inscribed in regulations so that the resulting entities are attractive for both lay investors and asset managers? What are the possible and desirable forms of public regulation that would make financial risks knowledgeable, public and limited?

Questions such as the above are urgent matters in former socialist countries where most of the former state run social protection systems are externalized to the market and built on the infrastructure of financial arrangements (e.g. the implementation of private pension systems or the privatization of state ownership). In Romania they are brought to the fore by the ongoing efforts to harmonize regulations as a premise for the better integration of capital markets in the European Union. Moreover, the global relevance of such issues was made

obvious by the current financial crises triggered by the collapse of the sub-prime sector in the United States and by the huge losses produced to Societe Generale (the second largest commercial bank in France) by a single rogue trader. What are the peculiarities of forms of knowledge characterizing late financial capitalism and is increasing sophistication decreasing or rather augmenting risks? What are the appropriate forms of regulation and should they be concerned with facilitating the creation of value or with investor safety?

The connections between knowledge, measurability and value, central for the practices involving money throughout the world, reveal some of the fundamental dimensions of social change in post-communist Romania. Leaving behind a world in which most of the financial processes tended to be subordinated by central planning and having as an ideal the complete redundancy of money (although in the informal sector of the second economy alcohol, cigarettes, or coffee played the role of money substitutes) my informants struggle to make ends meet in a world where money is the pervasive idiom in discussions about value. Departing from a world of monetary stability (there was no inflation, no bankruptcies, only one single state savings bank, and regular payments of salaries in socialism) my informants now experience a world where goods are standardized and abundant, yet money is increasingly fluid, object of manipulation, uncertain, new and diverse, having a lot of possibilities for spending and investment. It is not always easy nor safe to accept reflexive forms of knowledge and value, that is, the logic of late capitalism where the success of financial ventures is as much premised on rational investing as on the mutual belief of investors in the future growth prospects of that enterprise. This sense of insecurity is all the more acute in a social setting where the episodes of deception have been numerous and have usually ended with defeats and losses for lay investors. It is particularly difficult to accept that the value of money is not necessarily dependent on God, gold, or the patronizing state but rather reflexively linked to the generalized trust of all those interchanging it.

This specific outlook makes it easier to understand the ethos of my informants and the specific form of change it makes possible. Change does not come as a result of stable preexisting configurations of value that make possible a new social order, but more as a result of accidental arrangements of events in specific situations. Previously tested routines are applied to new situations which often result in misappropriations generating mutations in social meanings and change as unintended consequences. Thus, change happens while many are still looking backwards and the past enters the present not as continuity but as an instance replicated instrumentally in situations of radical uncertainty. The ongoing challenge is to understand how people accommodate such forms of persistent instability and how they

routinize the continuous negotiation of values implicit in social action. The understanding of the practical negotiations of values is the key for the scholarly representation and ethnographic writing of processes of social change.

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